

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing)	CG Docket No. 04-53
the Controlling the Assault of Non-)	
Solicited Pornography and Marketing)	
Act of 2003)	

**COMMENTS OF JOE SHIELDS ON
NOTICE OF PROPOSED RULEMAKING**

INTRODUCTION

My name is Joe Shields. I am a resident of Harris County, Texas. I want to thank the Commission for providing the opportunity for the public to comment on the Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

CAN SPAM ACT

The CAN Spam Act directs the Commission to implement regulations to protect consumers from unsolicited text message advertisements that shift the adverting costs to the recipient of such unsolicited text message advertisements without permission of the recipient (Notice of Proposed Rule Making 04-53).

DEFINITION

Unsolicited commercial email (“UCE”) commonly referred to as “spam” has destroyed the email communications medium. According to the latest figures 77% of all email traffic is UCE. The cost of UCE to businesses and consumers is in the billions of dollars annually.

A mobile service commercial message (“MSCM”) is no different than UCE. MSCM costs little to transmit, the origination can be easily masked, is addressed to a domain (yourcellnumber@yourcellprovider.com) and can be sent by the tens of millions per day by a single entity. Just as with UCE the cost is entirely borne by the recipients of the MSCM. The network and domain owners will pass MSCM overhead operating costs on to the consumer.

UNWANTED MSCM ADVERTISEMENTS

There is little dispute that UCE is unwanted. Even the marketing associations agree UCE is unwanted. Their only arguments are that their UCE isn’t really UCE and their UCE is somehow wanted by consumers. The same argument was made for telemarketing – the number of sign-ups to the National Do Not Call registry has obviously destroyed that argument.

Whether MSCM advertisements are “pulled” from a server or “pushed” to the cellular telephone is irrelevant – it is unwanted UCE.

ORIGINATION OF MSCM ADVERTISEMENTS

Just as with UCE the sender of MSCM can easily mask its origination point. The masking of the origination point of UCE is easily done – just as with UCE the MSCM can be relayed through compromised computers. Addressing this issue is not unlike requiring caller ID to be transmitted in all telemarketing calls. Requiring proper identification of the entity represented and requiring proper identification of the entity transmitting the MSCM should be part of the Commissions rules regarding MSCM. The masking or obfuscation of the origination point should be a serious violation of the Commissions rules.

AVOIDING UNWANTED MSCMS

Just as with UCE, filtering unwanted MSCM's will be an unending escalation of filtering techniques and circumvention techniques. Just as with UCE, the senders of MSCM will not honor opt-out requests. Just as with UCE, the text messaging medium will be destroyed by senders of UCE.

The only way to keep the text messaging medium from succumbing to the same fate as email is to require provable prior express consent - no exceptions!

The requirement for provable prior express consent eliminates the burden to consumers to opt-out and the need to have a National Do Not Send MSCM Registry.

CONCLUSION

In closing I want to again thank the Commission for providing the opportunity for the public to comment on the Commission's Notice of Proposed Rule Making.

Respectfully submitted,

_____/s/

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